

ORDER NO. 755

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Dan G. Blair;
Tony L. Hammond; and
Nanci E. Langley

Competitive Product Prices
Global Reseller Expedited Package Contracts 1
(MC2010-21)
Negotiated Service Agreement

Docket No. CP2011-65

ORDER APPROVING ADDITIONAL
GLOBAL RESELLER EXPEDITED PACKAGE CONTRACT
NEGOTIATED SERVICE AGREEMENT

(Issued June 30, 2011)

I. INTRODUCTION

The Postal Service seeks to add a specific Global Reseller Expedited Package contract to the Global Reseller Expedited Package (GREP) Contracts 1 product established in Docket No. MC2010-21.¹ For the reasons discussed below, the Commission approves the proposed contract.

¹ Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package Service Agreement and Application For Non-Public Treatment of Materials Filed Under Seal, June 14, 2011 (Notice).

II. BACKGROUND

On June 14, 2011, the Postal Service filed a Notice announcing that it has entered into an additional GREP contract. The Postal Service believes the instant contract is functionally equivalent to the GREP baseline agreement and is supported by Governors' Decision No. 10-1, attached to the Notice and originally filed in Docket No. CP2010-36. *Id.* at 1, Attachment 3. The Notice explains that Order No. 445, which established GREP Contracts 1 as a product, also authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 1-2. Additionally, the Postal Service requested to have the contract in Docket No. CP2010-36 serve as the baseline contract for future functional equivalence analyses of the GREP Contracts 1 product.

The Postal Service filed the instant contract pursuant to 39 CFR 3015.5 and in accordance with Order No. 445. The instant contract is a renewal of the first GREP contract, filed in Docket No. CP2010-36, which is scheduled to expire on June 30, 2011. *Id.* The Postal Service states that it will notify the mailer of the effective date within 30 days after all necessary regulatory approvals have been received. The instant contract will remain in effect until January 31, 2012, or a date in January 2012 prior to the Postal Service's publication of price changes for its Express Mail International (EMI) and/or Priority Mail International (PMI) products. *Id.* at 3. It may, however, be terminated by either party on not less than 30 days' written notice. *Id.* Attachment 1 at 5.

The Postal Service filed supporting materials including Governors' Decision No. 10-1 and an application for non-public treatment of materials filed under seal.

The Notice advances reasons why the instant GREP contract fits within the Mail Classification Schedule language for GREP Contracts 1. The Postal Service identifies customer-specific information and general contract terms that distinguish the instant contract from the baseline GREP agreement. It states that the instant contract satisfies the requirements established by Governors' Decision No. 10-1 concerning rates for GREP contracts.

The Postal Service concludes that its filing demonstrates that the instant GREP contract complies with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the baseline GREP contract. It states that the differences do not affect the services being offered or the fundamental structure of the contract. Therefore, it requests that the instant contract be included within the GREP Contracts 1 product. *Id.* at 6.

In Order No. 746, the Commission gave notice of the docket, appointed a Public Representative, and provided the public with an opportunity to comment.²

III. COMMENTS

Comments were filed by the Public Representative.³ No other interested person submitted comments. The Public Representative reviews the contract's functional equivalence with the baseline agreement in Docket No. CP2010-36 and compliance with 39 U.S.C. 3633(a). *Id.* at 1-3. He observes that the instant contract is between the same parties, includes nearly the same products, but is distinguishable by the exclusion of EMI and PMI flat rate items from the definition of qualifying mail. *Id.* at 2. He concludes that because EMI and PMI flat rate items compose a small percentage of the rate options available to the reseller, their exclusion does not alter the instant contract's functional equivalence with the baseline GREP contract. *Id.* While he concludes that the financial estimates provided by the Postal Service demonstrate that the rates comply with 39 U.S.C. 3633(c)(2), the Public Representative raises two concerns regarding the Postal Service's filing. First, he notes that the workpapers submitted in support of the filing do not, in all instances, reference the price floor formulas established by Governors' Decision No. 10-1 and further that some cells are hardcoded. He maintains that without a corresponding reference to the pricing formulas, it is not possible to confirm that all discounted rates in each rate cell will cover costs. *Id.* at 2-3.

² Notice and Order Concerning an Additional Global Reseller Expedited Package Contract Negotiated Service Agreement, June 16, 2011 (Order No. 746).

³ Public Representative Comments Concerning Global Reseller Expedited Package Contract, June 27, 2011.

Second, the Public Representative observes that the public version of the instant contract includes two price annexes, but that the Postal Service provides revenue and cost information only for one of them. He states that the pre-existing relationship with the shipper may be the reason, but that the omission creates some uncertainty. *Id.* at 3. On balance, however, the Public Representative concludes that the instant contract complies with requirements of 39 U.S.C. 3633 for competitive negotiated service agreements and recommends the Commission's approval. *Id.*

IV. COMMISSION ANALYSIS

The Postal Service proposes to add an additional contract under the GREP Contracts 1 product that was created in Docket No. MC2010-21. First, the Commission reviews the contract to ensure that it is substantially equivalent to the contract approved in Docket No. CP2010-36, and thus belongs as part of the GREP Contracts 1 product. Second, the Commission must ensure that the contract at issue in this proceeding satisfies the requirements of rules 3015.5 and 3015.7, and 39 U.S.C. 3633.

Functional equivalence. The Postal Service states that the contract shares similar cost and market characteristics with the baseline contract. It asserts that the instant contract meets the pricing formula and classification established in Governors' Decision No. 10-1 which comport with 39 U.S.C. 3633 and the Commission's rules. The Postal Service states that it differs from the contract in Docket No. CP2010-36 pertaining to revisions or clarification of terms, *e.g.*, definition of qualifying mail, discounts offered by the reseller, minimum revenue, periodic review of minimum commitment, term, assignment, number of rate groups, and the option to solicit the reseller's customers. Notice at 4-6.

The Commission finds that the exclusion of flat rate items from the definition of "qualifying mail" does not have significant effect on the functional equivalence of the instant contract. As noted by the Public Representative, the elimination of the flat rate mail items should not substantially affect revenues, costs or compliance with 39 U.S.C. 3633.

The instant contract appears to be similar to the contract filed in Docket No. CP2010-36, although it differs in some minor respects relative to customer-specific information and general terms. These differences notwithstanding, the Commission concludes that the instant contract may be included in the GREP Contracts 1 product.⁴

Cost considerations. The Commission reviews competitive products to ensure that they meet the applicable requirements of rules 3015.5 and 3015.7, and 39 U.S.C. 3633. While the financial data submitted by the Postal Service supports the conclusion that the prices for the instant contract will satisfy 39 U.S.C. 3633(a), the Commission shares the Public Representative's concern that the Postal Service's use of hardcoded prices creates uncertainty and hampers the analysis of the contract, particularly in light of the short time frame for regulatory review pursuant to section 3015.5. In future filings pursuant to 39 CFR part 3015, the Postal Service must refrain from the use of hardcoded prices in supporting documentation. Failure to do so may lead to delays in the approval process.

The Commission finds that the Postal Service's omission of a pricing annex in the financial worksheets filed under seal, as also noted by the Public Representative, to be cause for concern. The expectation is that the public version of the filing is reflected in the supporting documentation filed under seal and that two pricing annexes would apply to the instant contract. The absence of the second annex creates ambiguity concerning cost coverage for all potential volume entry scenarios. Because the instant contract is the successor to the existing GREP contract, it may be that only one pricing annex applies. The Commission will assume that to be the case. If not the case, the Postal Service shall notify the Commission by July 6, 2011 of the reason(s) for the pricing annex's omission. If the pricing annex applies to the instant contract, the Postal Service shall provide the supporting workpapers. In future filings of this nature, the Postal Service should address the omission of any otherwise applicable provision in the underlying contract.

⁴ Because the instant contract is the successor to the existing GREP baseline contract, it in essence becomes the baseline for future GREP Contracts 1.

The Commission has reviewed the Notice, financial analyses provided under seal that accompanies the instant contract, as well as the comments filed in this proceeding.

Based on the information provided, the Commission finds that the contract submitted should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, a preliminary review of the instant contract indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The Postal Service shall notify the Commission of the effective date of the instant contract. If the instant contract terminates earlier than scheduled, the Postal Service shall inform the Commission prior to the new termination date.

Within 30 days of the expiration of the current contract, which expires June 30, 2011, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the contract, including any penalties paid. See Order No. 445 at 8.

In addition, within 30 days of the expiration of the instant contract, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the contract, including any penalties paid.

In conclusion, the Commission finds that the contract submitted in Docket No. CP2011-65 is appropriately included within the GREP Contracts 1 product.

V. ORDERING PARAGRAPHS

It is ordered:

1. The contract filed in Docket No. CP2011-65 is included within the Global Reseller Expedited Package Contracts 1 (MC2010-21) product.

2. The Postal Service shall notify the Commission of the effective date of the instant contract and update the Commission if the contract terminates prior to the scheduled termination date as discussed in this Order.
3. Within 30 days of the expiration of the current contract, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the contract, including any penalties paid.
4. Within 30 days of the expiration of the instant contract, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the contract, including any penalties paid.
5. As discussed in the body of this Order, the Postal Service shall, if applicable, file supplemental information concerning the omitted price annex.

By the Commission.

Shoshana M. Grove
Secretary